IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8 OF 2004
IN
CRIMINAL APPLICATION NO.1225 OF 2005
(FOR LEAVE TO APPEAL)

The State of Maharashtra ..Applicant

V/s.

Amit Atmaram Bhosale ..Respondent

Smt.P.H.Kantharia, Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 22.02.2005.

PC

. By the Judgment dated 30.05.2003 IVth Additional Sessions Judge, Thane acquitted the present respondent of the charge under Section 307 of IPC. Aggrieved thereby, the State presented Criminal Appeal (now converted in Criminal Application for leave to appeal) on 1st January, 2004. By this application, the State prays for condonation of delay.

2. As noticed above the impugned Judgment of acquittal came to be passed on 30.05.2003. The application for the certified copy of the aforesaid Judgment was made on 16.9.2003. The certified copy was ready on 18.9.2003 and delivered to the

concerned Public Prosecutor Thane on that date. By

his opinion dated 15.10.2003, the Public Prosecutor Thane sent the proposal to the Law & Judiciary department for challenging the Judgment of acquittal. The Law & Judiciary department received the opinion of the Public Prosecutor, Thane on 17.10.2003 and issued resolution dated 21.10.2003 for challenging the Judgment of acquittal. The Public Prosecutor, High Court (A.S.) Bombay received the said Resolution on 27.10.2003. However, since the original certified copy was not sent alongwith the Resolution, vide letter dated 4.11.2003, the Public Prosecutor High Court (A.S.) called for certified copy of the Judgment from the Law & Judiciary department. The certified copy was forwarded by the Additional Public Prosecutor, Thane on 29.11.2003 and thereafter the Criminal Appeal was prepared and presented on 1st January, 2004.

3. Having considered the averments made in the application for condonation of delay, we find that there was fault on the part of the Public Prosecutor, Thane in not applying for the certified copy of the impugned Judgment within limitation. It was only on 16.09.2003 that the application for certified copy was made. Even that certified copy was not immediately sent by the Public Prosecutor, Thane to Law & Judiciary department. It was only

when the Public Prosecutor, High Court (A.S.) Bombay wrote to the Law & Judiciary to transmit the

certified copy, that the certified copy of the Judgment was forwarded by the Additional Public Prosecutor, Thane as late as on 29.11.2003.

4. In the facts and circumstances of the case, we are satisfied that delay is sufficiently explained. We may notice that despite the service of the show cause notice of this application upon the respondent, he has not chosen to appear and contest the application.

5. We accordingly condone the delay.

6. Criminal application stands disposed of.

(R.M.LODHA,J)

(R.S.MOHITE,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1225 OF 2005
(FOR LEAVE TO APPEAL)

The State of Maharashtra ..Applicant

V/s.

Amit Atmaram Bhosale ..Respondent

Smt.P.H.Kantharia, Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 22.02.2005.

PC

. By this Criminal application for leave to appeal, the State challenges the Judgment of acquittal dated 30.5.2003 and seeks leave to appeal against the said Judgment of acquittal.

2. The respondent herein was prosecuted for the offence punishable under Section 307 of IPC. As per the prosecution case the accused/respondent assaulted one Shiblal Rajbhir Tenariya at about 12.00 p.m. on 1.7.2002 with knife resulting in severe injuries on the person of Shiblal. Though the prosecution examined various witnesses yet it did not examine the medical officer. The absence of examination of medical officer was sought to be explained by stating that the concerned Medical

officer resided at Delhi and his correct address

could not be secured. Whatever be the reason of not examination of the Medical officer but the fact remains that for want of medical evidence, the prosecution could not prove the nature of the injuries sustained by the Complainant.

3. In view thereof, the acquittal of the accused of the charge under Section 307 of IPC cannot be faulted.

4. No case for grant of leave is made out.

5. Criminal application is accordingly rejected.

(R.M.LODHA,J)

(R.S.MOHITE,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.9 OF 2004
IN
CRIMINAL APPEAL NO.6 OF 2004

The State of Maharashtra ..Applicant

V/s.

Amit Atmaram Bhosale ..Respondent

Smt.P.H.Kantharia, Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 22.02.2005.

PC

. By the Judgment dated 30.05.2003 IVth Additional Sessions Judge, Thane convicted the present respondent under Sections 324 and 504 of IPC. Aggrieved thereby, the State preferred Criminal Appeal for enhancement on 1st January, 2004. By this application, the State prays for condonation of delay.

2. As noticed above the impugned Judgment of came to be passed on 30.05.2003. The application for certified copy of the aforesaid Judgment was made on 16.9.2003. The certified copy was ready on 18.9.2003 and delivered to the concerned Public Prosecutor on that date. By his opinion dated

15.10.2003 the Public Prosecutor Thane sent the proposal to the Law & Judiciary department for filing the criminal appeal for enhancement of

sentence. The Law & Judiciary department received the opinion of the Public Prosecutor, Thane on 17.10.2003 and issued resolution dated 21.10.2003 for filing the appeal. The Public Prosecutor, High Court (A.S.) Bombay received the said Resolution on 27.10.2003. However, since the original certified copy was not sent alongwith the Resolution, vide letter dated 4.11.2003 the Public Prosecutor called for certified copy of the Judgment from the Law & Judiciary department. The certified copy was forwarded by the Additional Public Prosecutor Thane on 29.11.2003 and thereafter the Criminal Appeal was prepared and presented on 1st January, 2004.

3. Having considered the averments made in the application for condonation of delay, we find that there was fault on the part of the Public Prosecutor, Thane in not applying for the certified copy within limitation. It was only on 16.09.2003 that the application for certified copy was made. Even that certified copy was not immediately sent by the Public Prosecutor, Thane to Law & Judiciary department. It was only when the Public Prosecutor, High Court (A.S.) Bombay wrote to the Law & Judiciary department to transmit the certified copy,

that the certified copy of the Judgment was forwarded by the Additional Public Prosecutor, Thane as late as on 29.11.2003.

4. In the facts and circumstances of the case, we are satisfied that delay is sufficiently explained. We may notice that despite the service of the show cause notice of this application upon the respondent, he has not chosen to appear and contest the application.

5. We accordingly condone the delay.

6. Criminal application stands disposed of.

(R.M.LODHA,J)

(R.S.MOHITE,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.6 OF 2004

The State of Maharashtra ..Appellant

V/s.

Amit Atmaram Bhosale ..Respondent

Smt.P.H.Kantharia, Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 22.02.2005.

PC

. Heard the learned Addl.Public prosecutor for the appellant/State.

2. The respondent herein faced trial for the offence punishable under Sections 307 & 504 of IPC in Sessions Case No.439 of 2002. Upon conclusion of the trial, the learned IVth Addl.Sessions Judge, Thane acquitted the accused of the offence punishable under Section 307 of IPC but convicted him of the offence punishable under Sections 324 and 504 of IPC. The learned trial Judge gave the accused benefit of Section 360 of Cr.P.C. since the accused at the relevant time was 19 year old.

3. The order of the learned trial Judge in this

regard is thus :-

> He is hereby directed to execute the bond of good behaviour to maintain peace and not to commit any criminal act in future for the period of 2 years. He should also pay the compensation of Rs.5000/- to the complainant fortiwith. Alongwith his bond the accused to furnish surety bond of Rs.15,000/- with the undertaking that the accused should not commit any violent act so as to bring him within the purview of criminal prosecution during the period of 2 years as he has undertaken in his good behaviour bond. On the failure of the accused to maintain public peace and commit any crime the accused will have to attend the court to hear on the point of sentence and then to suffer the sentence as awarded by the court. The bail-bonds of the accused stands surrendered.

4. Looking to the age of the respondent and over all circumstances of the case, the aforesaid order of the learned trial Court does not call for any interference.

5. Criminal appeal for enhancement of sentence does not deserve to be admitted.

6. Dismissed accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)